



FEDERAL ELECTION COMMISSION
Washington, DC 20463

First Class Mail

George J. Terwilliger III
McGuire Woods LLP
2001 K Street N.W.
Suite 400
Washington, D.C. 20006

MAR 20 2019

RE: MUR 6918 (Aaron Schock)

Dear Mr. Terwilliger:

On August 8, 2016, you were notified that the Federal Election Commission found reason to believe that Aaron Schock violated 52 U.S.C. § 30114(c)(2) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b) of the Federal Election Campaign Act of 1971, as amended and Commission regulations by traveling on non-commercial aircraft for campaign-related activity. At that same time, the Commission determined to take no action at that time with regard to the alleged violations of 52 U.S.C. §§ 30116(f) and 30118(a).

On September 19, 2016, you submitted a response to the Commission's reason to believe findings. After conducting an investigation and considering the circumstances of the matter, the Commission determined, on March 14, 2019, to take no further action as to Aaron Schock and close the file in this matter. The Second General Counsel's Report setting forth the basis for the Commission's decision is enclosed

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. If you have any questions, please contact me at (202) 694-1618.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly D. Hart", with a stylized flourish at the end.

Kimberly D. Hart
Attorney

Enclosure: Second General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Aaron Schock)	
Schock for Congress and Paul Kilgore)	
in his official capacity as treasurer)	MUR 6918
Schock Victory Committee and Paul Kilgore)	
in his official capacity as treasurer)	
GOP Generation Y Fund and Paul Kilgore)	
in his official capacity as treasurer)	
TC Investments 3, LLC)	
Todd Green)	

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

1 We recommend that the Commission: (1) take no further action with regard to Aaron
2 Schock, GOP Generation Y Fund, and the Schock Victory Committee; (2) dismiss the allegation
3 that TC Investments 3, LLC and Todd Green violated 52 U.S.C. §§ 30118 or 30116 and the
4 Schock for Congress violated 52 U.S.C. §§ 30118, 30116, and 30104(b); and (3) close the file.

II. BACKGROUND

6 The Complaint in this matter alleged that then-Representative Aaron Schock violated
7 provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), the Honest
8 Leadership and Open Government Act ("HLOGA"), and related Commission regulations that
9 prohibit the use of non-commercial flights for campaign travel by House candidates. The
10 Complaint focused primarily on a series of eight flights on non-commercial aircraft between
11 2012 and 2014, seven of which were paid for by Schock's leadership PAC, GOP Generation Y
12 Fund and Paul Kilgore in his official capacity as treasurer ("Generation Y") and one of which
13 was paid for by his joint fundraising committee, Schock Victory Committee and Paul Kilgore in

1 his official capacity as treasurer ("SVC").¹ The Complaint also alleged that Schock and his
2 authorized committee, Schock for Congress and Paul Kilgore in his official capacity as treasurer
3 ("Schock Committee"), made or paid for one or more campaign-related flights on an aircraft
4 owned by TC Investments 3, LLC and/or Todd Green ("TC Investments"). The Commission
5 found reason to believe that Aaron Schock, SVC, and Generation Y violated the Act, HLOGA,
6 and Commission regulations in connection with the flights for which payments were made to
7 D&B Jet (two flights) and LoBair Inc. (six flights).² The Commission voted to take no action at
8 that time with respect to the allegations regarding TC Investments.³

9 In response to the Commission's reason-to-believe findings, Respondents argued that
10 (1) D&B Jet acted merely as an intermediary for the actual operators, one of which was a
11 commercial charter service and the other of which had advertised itself as a commercial charter
12 service; and (2) Schock took the six flights for which payments were made to LoBair in the good
13 faith belief that LoBair was a commercial operator. We investigated to determine whether the
14 D&B Jet and LoBair flights were commercial or non-commercial, whether there were additional
15 campaign flights on the LoBair aircraft, and whether Respondents paid fair market value for the

¹ Schock Victory Committee was comprised of Schock for Congress, GOP Generation Y Fund, 18th District Republican Central Committee, and the National Republican Congressional Committee. *See* Amended Statement of Organization, Schock Victory Committee (June 10, 2011). Schock won both the 2012 and 2014 elections, but resigned from Congress in March 2015. Schock is currently under criminal indictment and is awaiting trial on charges relating to the misuse of funds from his congressional office account.

² Specifically, the Commission found reason to believe Schock, SVC, and Generation Y violated 52 U.S.C. § 30114(c)(2) and 11 C.F.R. § 113.5(b) and that Schock additionally violated 11 C.F.R. § 100.93(c)(2). *See* Certification (July 14, 2016).

³ Respondents provided information stating that the aircraft was being leased to a licensed commercial charter service, Byerly Aviation, during this time period. *See* TC Investments/Todd Green Response, MUR 6918 (Schock) (Aug. 26, 2015) ("TC Investments Resp."). Further, the First General Counsel's Report noted that there had been disbursements from Schock's House of Representatives Office Account to Byerly Aviation. *See* First Gen. Counsel's Rpt. at p. 6 and fn. 12 ("First GCR").

1 flights or possibly received an in-kind contribution. The results of our investigation are detailed
2 below.

3 III. RESULTS OF INVESTIGATION

4 A. D&B Jet Flights

5 Generation Y paid D&B Jet for two campaign flights taken by Schock on two different
6 twin engine aircrafts.⁴ Respondents explained in response to the Commission's RTB findings
7 that D&B Jet "did not actually provide the air travel but only acted to facilitate the flight
8 arrangements with an air charter service and acted as an intermediary for the payment" between
9 the aircraft operators and the committees.⁵

10 The first company providing flight services through D&B Jet was Jet Air, Inc.
11 Generation Y paid \$1,832.53 for a single flight taken on a plane owned and operated by Jet Air,
12 Inc. Jet Air, Inc. was licensed by the FAA for commercial charter service.⁶

13 The second company providing flight services through D&B Jet was Peoria Aviation,
14 which is no longer in business. D&B Jet had entered into an arrangement with and prepaid
15 Peoria Aviation so that D&B's customers could fly on the two-engine Cessna 421C operated by
16 Peoria Aviation. Peoria Aviation was not an FAA-licensed commercial operator, but

⁴ Generation Y reported making a payment of \$1,558.63 to D&B Jet on October 30, 2012 and a payment of \$1,832.53 to D&B Jet on November 15, 2012. See September 2012 Monthly Report, GOP Generation Y Fund (Sept. 18, 2012); 2012 Pre-General Report, GOP Generation Y Fund (Oct. 25, 2012).

⁵ RTB Response at 1, MUR 6918 (Aaron Schock, Schock Victory Committee, and GOP Generation Y Fund) (Sept. 19, 2016) ("Joint Response"). See also https://registry.faa.gov/aircraftinquiry/Dealer_Results.aspx?DealerId=JET+AIR&PageNo=1 (last accessed on Feb. 15, 2019).

⁶ Jet Air, Inc. sent D&B Jet an invoice for \$1,832.53 on the day of the flight. *Id.*, Attach. A. The invoice included an aircraft rental fee of \$750 (2 hours at \$375/hour), a pilot service fee of \$475, and fuel costs of \$607.53. *Id.* Approximately two weeks later, D&B Jet sent an invoice to Schock for the same amount and Generation Y paid the invoice about a week later. *Id.*

1 Respondents assert that a D&B Jet representative told them that Peoria Aviation was an FAA-
2 licensed commercial operator.⁷ Respondents also point to Peoria Aviation's then-active website,
3 which included the following statements indicating that it offered commercial flight services:

4 1) Peoria Aviation offers a wide variety of aviation services from the Mt. Hawley
5 Auxiliary Airport. Whether you want to learn to fly, *charter an aircraft*, or find a
6 quality home for your aircraft, we are a great choice.

7
8 2) Contact us about our *charter services*.⁸

9 Peoria Aviation sent D&B Jet an invoice for \$908.63;⁹ D&B Jet invoiced Schock for
10 \$1,558.63, which included the \$908.63 amount charged by Peoria Aviation and an added \$650
11 aircraft lease fee;¹⁰ and Generation Y paid the D&B invoice.¹¹ Our research shows that the
12 amount billed and paid is consistent with current commercial charter rates for a Cessna 421C.¹²

13 **B. LoBair Flights**

14 Aaron Schock took six campaign flights on LoBair's twin-engine six passenger Cessna
15 414A for which either Generation Y or SVC paid LoBair.¹³ The response to the Commission's
16 findings stated that Respondents had a "good faith impression" that LoBair was an FAA-licensed

⁷ Respondents have been unable to identify the D&B Jet representative who made this statement. *Id.* at 2. Some individuals formerly associated with D&B Jet and Peoria Aviation refused to cooperate with the investigation.

⁸ Joint Resp. at 2, Attach. C (emphasis added).

⁹ *Id.*; Attach. B. The invoice includes a pilot service fee of \$395, fuel costs of \$435.15, oil costs of \$12.62, and pilot expenses of \$9.43.

¹⁰ *Id.*

¹¹ See 2012 Pre-General Report, GOP Generation Y Fund (Oct. 25, 2012).

¹² See Report of Investigation, Charter Flight Rates, MUR 6918 (Schock *et al.*) (May 19, 2018) ("Charter Flight Rates ROI").

¹³ Schock also took a number of non-campaign flights on the LoBair aircraft that were paid for by his congressional office account.

1 commercial charter operator.¹⁴ Respondents state that they typically would arrange a charter
2 flight by contacting pilots with whom they had a working relationship.¹⁵ If a pilot was available,
3 it was the pilot's responsibility to secure an aircraft.¹⁶ Respondents argue that "since only
4 commercial operators should be renting their aircraft out for charter services and the
5 Respondents were always charged for their flights, it seemed reasonable to believe that the firm
6 providing the air service was a commercial operator."¹⁷

7 Counsel for LoBair's current owners, Michael Miller and Matthew Vonachen,¹⁸ provided
8 a different account of how the flights were arranged, explaining that Schock or his office staff
9 would contact LoBair directly regarding use of the aircraft, and that LoBair's secretary would
10 contact the pilot that the company had on retainer, Marion Parr, who is now deceased.¹⁹
11 LoBair's counsel noted that Schock was the only person other than the owners who was allowed
12 to lease the aircraft, and that the owners viewed allowing him to lease the aircraft as a favor.²⁰
13 Although LoBair never represented itself as a commercial carrier, its owners do not recall if they
14 ever specifically told Schock that LoBair was not a licensed carrier.²¹

¹⁴ Joint Resp. at 4. Generation Y paid for five of the six LoBair flights at a total cost of \$5,887.80 and SVC paid LoBair a total of \$2,826.63 for the sixth flight. See First GCR at 5.

¹⁵ Joint Resp. at 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Counsel indicated that Vonachen purchased his 50% ownership interest in LoBair from Joseph O'Brien on October 1, 2013. Accordingly, Vonachen does not have any personal knowledge of the details of flights that took place prior to this date. See Report of Investigation at 1, MUR 6918 (Schock *et al.*) (May 10, 2017) ("ROI #1"). LoBair's prior owner declined a request to provide information regarding earlier interactions.

¹⁹ See E-mail from Kevin Sullivan, Esq. to Anne Spivey, OGC Investigator (May 11, 2017, 11:53:34a EDT) ("Sullivan E-mail #1"); ROI #1 at 1.

²⁰ *Id.*

²¹ See E-mail from Kevin Sullivan to Anne Spivey, OGC (May 16, 2017) ("Sullivan E-mail #2").

1 LoBair sent Schock invoices that charged \$700 per hour for aircraft rental and fuel
2 expenses.²² Although LoBair's counsel had opined that LoBair's charges were only designed to
3 cover its marginal costs, our research indicates that a \$700 per hour rate is consistent with the
4 current commercial charter rate for a twin engine Cessna 414A.²³

5 **IV. DISCUSSION**

6 HLOGA amended the Act to prohibit a candidate for the House of Representatives and an
7 authorized committee or leadership PAC of such a candidate from making any expenditures for
8 non-commercial aircraft travel.²⁴ The Commission's implementing regulations similarly prohibit
9 House candidates from traveling on non-commercial aircraft on behalf of their own campaigns or
10 the campaigns of other candidates for the House of Representatives.²⁵ The prohibition on non-
11 commercial air travel applies to any House candidate who is a "campaign traveler," which
12 includes, "any candidate traveling in connection with an election for Federal office or any
13 individual traveling in connection with an election for Federal office on behalf of a candidate or
14 political committee."²⁶ The prohibition cannot be avoided by payments to the service provider,
15 even from the candidate's personal funds.²⁷ Commercial travel is defined as travel aboard "an
16 aircraft by an air carrier or commercial operator certificated by the Federal Aviation

²² See ROI #1, Attachs. This is the same rate for other flights paid for by Schock's congressional office account.

²³ Sullivan E-mail #1 at 19; *see also* Charter Flight Rates ROI.

²⁴ 52 U.S.C. § 30114(c)(2). HLOGA became effective on September 14, 2007.

²⁵ 11 C.F.R. §§ 100.93(c)(2) and 113.5(b). The regulations became effective on January 6, 2010. *See* Campaign Travel, 74 Fed. Reg. 63951 (Dec. 7, 2009) ("E&J").

²⁶ *Id.* § 100.93(a)(3)(i)(A).

²⁷ E&J, 74 Fed. Reg. at 63956.

1 Administration, provided that the flight is required to be conducted under FAA air carrier safety
2 rules...."²⁸

3 **A. D&B and LoBair Flights**

4 The investigation revealed that the flights billed by D&B Jet were actually operated by
5 Jet Air, Inc. and Peoria Aviation. Jet Air, Inc., which operated one of the flights, was an FAA-
6 licensed commercial operator and, therefore, Schock's use of the Jet Air, Inc. aircraft²⁹ for a
7 campaign flight did not violate HLOGA. However, Peoria Aviation, which operated the second
8 flight (costing \$1,559), was not an FAA-licensed commercial carrier, and Schock's campaign
9 flight on that aircraft violated HLOGA. LoBair, which operated the remainder of the flights at
10 issue (totaling \$8,714) was not FAA-certificated as a commercial operator at the time of the
11 flights, and Schock's campaign flights on that aircraft also violated HLOGA.

12 Under the circumstances presented here, however, we recommend that the Commission
13 exercise its prosecutorial discretion and take no further action with respect to these flights.
14 Respondents were billed and immediately paid commercial charter rates for the use of the
15 aircraft, and assert that they believed the aircraft qualified as a commercial charter.³⁰ While
16 neither of these factors negates the violation,³¹ they do distinguish this matter from the single

²⁸ 11 C.F.R. § 100.93(a)(3)(iv)(A).

²⁹ There is no indication the Jet Air, Inc. aircraft used for Schock's flight was not subject to the applicable FAA safety standards.

³⁰ Prior enforcement matters with HLOGA violations did not include any purported mistake as to non-commercial nature of the flights or involve contemporaneous billing and payment of commercial charter rates for campaign flights. *See, e.g.,* ; MUR 6421 (Benishek); MUR 6394 (Pingree).

³¹ As noted above, the Explanation and Justification for the HLOGA regulations specifically say that the prohibition cannot be avoided by payments to the service provider, even from the candidate's personal funds. E&J, 74 Fed. Reg. at 63956.

1 HLOGA matter where the Commission has pursued a civil penalty.³² Further, Schock is no
2 longer a federal officeholder and is currently under indictment for alleged criminal offenses
3 related to his use of public and campaign funds, and neither SVC or Generation Y are active
4 committees. In light of the circumstances, we recommend that the Commission exercise
5 prosecutorial discretion and take no further action as to this violation.³³

6 **B. TC Investments Flights**

7 The Act prohibits any person from making a contribution to any candidate or the
8 candidate's authorized committee with respect to a federal election which, in the aggregate,
9 exceeds \$2,500 in the 2012 election cycle and \$2,600 in the 2014 election cycle; the
10 corresponding limit for contributions to a leadership PAC is \$5,000 per year.³⁴ The Act further
11 provides that no candidate, or officer or employee of a political committee, shall knowingly
12 accept any contribution that exceeds the contribution limits.³⁵ In addition, the Act and

³² In MUR 6394 (Pingree) the Commission negotiated a conciliation agreement and civil penalty where a candidate had flown on two non-commercial flights valued at \$13,457, resulting in an excessive in-kind contribution. Here, the amount at issue (\$10,273) is lower than the amount in Pingree, the costs of the flights were immediately paid for, and there was no impermissible in-kind contribution resulting from the flights. *See also* MUR 6421 (Benishek) (the Commission dismissed the matter involving flights valued at \$3,213 even where a corporate in-kind contribution resulted from the flights). Moreover, the activity here occurred over five years ago and any conciliation would be limited to remedial measures and injunctive relief. *See* 26 U.S.C. § 2462 (barring the recovery of "any civil fine, penalty, or forfeiture, pecuniary or otherwise" if an action is not commenced within five years); *FEC v. Christian Coal.*, 965 F. Supp. 66, 71 (D.D.C. 1997) (holding that injunctive relief is not a penalty); *FEC v. Nat'l Republican Senatorial Comm.*, 877 F. Supp. 15, 20-21 (D.D.C. 1995) (same).

³³ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

³⁴ *See* 52 U.S.C. § 30116(a)(1)(A) and (C). A contribution "includes any gift, subscription, loan, advance, or deposit or money for anything of value made by any person for the purpose of influencing any election for federal office." 52 U.S.C. § 30101(8)(a)(i). "Anything of value" includes in-kind contributions. 11 C.F.R. § 100.52(d)(1). Unless otherwise exempted under 11 C.F.R. Part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. *Id.* If the goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. *Id.*; *see also* § 100.52(d)(2).

³⁵ 52 U.S.C. § 30116(f).

1 Commission regulations prohibit corporations from making any contribution, and corporate
2 officers from consenting to any corporate contribution, in connection with a federal election, and
3 also prohibit candidates and committees from accepting such contributions.³⁶ The Act also
4 requires political committees to file reports disclosing their receipts and disbursements, including
5 in-kind contributions.³⁷

6 As noted above, the Commission voted to take no action with respect to an allegation that
7 Schock and Schock for Congress made one or more campaign-related flights on a private aircraft
8 owned by TC Investments 3, LLC and/or Todd Green (collectively "TC Investments"). Because,
9 during the course of the investigation, we did not come across any evidence regarding any TC
10 Investments flights taken by Schock as a campaign traveler, we recommend that the Commission
11 dismiss the allegation that TC Investments 3, LLC and Todd Green violated 52 U.S.C.
12 §§ 30118(a) or 30116 by making prohibited or excessive in-kind contributions in the form of
13 campaign-related flights on a non-commercial aircraft, and that Schock for Congress violated
14 52 U.S.C. §§ 30118(a), 30116(f), and 30104(b) by receiving prohibited or excessive in-kind
15 contributions and failing to report them.

16 **V. RECOMMENDATIONS**

- 17 1. Take no further action as to Aaron Schock, Schock Victory Committee and Paul
18 Kilgore in his official capacity as treasurer, and GOP Generation Y Fund and
19 Paul Kilgore in his official capacity as treasurer.
20
21 2. Dismiss the allegation that TC Investments 3, LLC and Todd Green violated
22 52 U.S.C. §§ 30118 or 30116 and that Schock for Congress violated 52 U.S.C.
23 §§ 30118, 30116, and 30104(b).

³⁶ *Id.* § 30118(a) and 11 C.F.R. § 114.2(e).

³⁷ *Id.* § 30104(a)-(b); 11 C.F.R. § 104.1-104.3 and 104.13.

3. Approve the appropriate letters.

4. Close the file.

2/15/19

Date

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Acting General Counsel

Kathleen M. Guith
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